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IN THE

Supreme Court of the United States

October Term, 1967.

No. 1075

HARRY C. ZUBIK and LORRAINE F. ZUBIK, his wife, and HARRY ZUBIK COMPANY, INC., LAWRENCE W. BEAVER, JAMES H. HALEY, CHARLES THORNTON and ELMER P. GRIMM

v.

CHARLES ZUBIK, JR. and VIRGINIA ZUBIK DRAMBEL, Executors of the Estate of CHARLES ZUBIK, SR.

In the Matter of
Petition of CHARLES ZUBIK, individually, for Exoneration from or Limitation of Liability.

CHARLES ZUBIK, JR. and VIRGINIA ZUBIK DRAMBEL, Executors of the Estate of CHARLES ZUBIK, SR.,
Respondents.

MEMORANDUM IN OPPOSITION TO PETITIONERS' PETITION FOR CERTIORARI.

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HARRY C. ZUBIK AND LORRAINE F. ZUBIK, HIS WIFE, AND HARRY ZUBIK COMPANY, INC., LAWRENCE W. BEAVER, JAMES H. HALEY, CHARLES THORNTON AND ELMER P. GRIMM,

v.

CHARLES ZUBIK, JR. AND VIRGINIA ZUBIK DRAMBEL, EXECUTORS OF THE ESTATE OF CHARLES ZUBIK, SR.

IN THE MATTER
OF
PETITION OF CHARLES ZUBIK, INDIVIDUALLY, FOR EXONERATION FROM OR LIMITATION OF LIABILITY.

CHARLES ZUBIK, JR. AND VIRGINIA ZUBIK DRAMBEL, EXECUTORS OF THE ESTATE OF CHARLES ZUBIK, SR.,
Respondents.

MEMORANDUM IN OPPOSITION TO PETITIONERS' PETITION FOR CERTIORARI.

In the interest of brevity, respondents respectfully submit this memorandum to emphasize that there are no special and important reasons impelling the granting of the instant Petition for Certiorari.

I.

Petitioners' first "Question Presented", challenging the Third Circuit's refusal to deviate from standard principles with respect to piercing the corporate veil, is necessarily a question vitally intertwined with the operative facts. Indeed, the application of this rule, because it is equitable in nature, must always rest on the equities developed by the facts in a given case. Hence a decision by this Court, necessarily limited to our facts, would have little effect on other cases involving this broad question. In view of this, the question fails to demonstrate the general or special importance that would qualify it for review by this Court.

Moreover, petitioners' contention that the question affects maritime tort litigants, and thus is important to Federal law, becomes meritorious only if admiralty law is to develop a corporate law and/or code distinct from State corporate laws and codes. No such need is shown, or even alleged. In its absence, the statement of the issue indicates its lack of merit.

II.

Petitioners' second and final "Question Presented", alleging, in effect, a conflict among the Circuits in following the "clearly erroneous" rule of Federal Rule of Civil Procedure 52(a), is patently frivolous. In Part I of the Court of Appeals decision, Judge Van Dusen specifically cited and applied the "clearly erroneous" rule in affirming a portion of the District Court findings. Accordingly, it is abundantly clear that the remainder of the opinion, reversing the decision of the Court below, does not constitute a trial *de novo*, as contended, but, rather, is a conclusion that the findings of fact were clearly erroneous. Thus, the

alleged conflict of Circuits is nonexistent, and there is no special or important reason for this Court to review the record and the analyses of the trial and appellate courts.

WHEREFORE, we pray this Honorable Court to deny the Petition for Certiorari.

Respectfully submitted,

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and
JOHN D. RAY,
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Of Counsel:
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